IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3039 OF 2005

Harsh Mander ...Applicant.

V/s.

Vintage Cards & Creations Ltd. & Ors. ...Respondents.

Mr.Anand Grover i/b Mr.Prakash Mahadik for the Applicant.
Mr. Tejas Deshpande for the Respondent No.1.
Ms.S.V.Gajare, the A.P.P. for the State.

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : 18th August, 2005.
P.C.:

1. Heard the learned advocate for the Applicant and the learned Additional Public Prosecutor for the State and the learned Advocate for Respondent No.1 i.e. original complainant.

2. The Applicant has prayed for quashing of the criminal complaint being C.C.No.171 of 2004, which is pending before the Learned Judicial Magistrate First Class, Court No.5, Pune. The said complaint is under section 420 of the Indian Penal Code. In the said complaint, process came to be issued against the Applicant under section 420 of the Indian Penal Code. The learned advocate for the Applicant has submitted that the learned Magistrate erred in issuing the process against the Applicant and the said process

deserves to be recalled or quashed. He has further submitted that if the said process is recalled or quashed, the complaint and the proceedings relating thereto would come to an end. In the present application, the applicant has also prayed for quashing of process issued against him under section 420 of Indian Penal Code.

3. The Applicant had earlier preferred an application before the learned Metropolitan Magistrate for recalling the process. The said Application came to be rejected by order dated 1.4.05. From the decision of the Supreme Court in the case of **Adalat Prasad v. Rooplal Jindal And Others (2004) 7 SCC 338**, it is clear that the Magistrate does not have the power to recall the process. Hence, I am not inclined to interfere with the order of the Magistrate dated 1.4.05.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, I am of the opinion that the Applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be

appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The Applicant is granted four weeks time to prefer necessary revision before the Sessions Court. In view of the liberty granted to the Applicant, the Trial Court shall not proceed with the trial for a period of four weeks from today. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of the Magistrate dated 1.4.05 whereby the Application for recalling of the process came to be rejected.

6. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. The learned advocate for Respondent No.1 fairly states that the matter will be argued before the Sessions Court only on merits and no objection will be raised in respect of delay in filing Revision before the Sessions Court.

7. It is stated on behalf of the Applicant that the Applicant is a permanent resident of Delhi and he is over 55 years of age. Hence, it is prayed that the Applicant may be exempted from personal appearance before the Trial Court. Looking to the facts of this case, the learned Magistrate shall grant exemption to the Applicant in respect of personal appearance unless the learned Magistrate is of the opinion that the presence of the Applicant is absolutely necessary. In such case, on advance notice being given to the Applicant, the Applicant shall remain present before the Trial Court on the date indicated in the notice.

8. Application is disposed of.

(V.K.TAHILRAMANI,J.)